O/Cr.P

1951

**File No.** 12/51

Legal Dept

G **BRANCH**

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**Subject:-**

Opinion on the Criminal Procedure Code

(P) 9/(E)

O/Cr.P.C/51

**File No.** 12/51

Gen. 194 e.

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Legal Department.

The Government Order, Civil Supplies Department No. 410/II dated 1st August 1949 empwoers the Revenue Officers above the grade of Aval Karkun to enter upon and search any premises and seize any articles in respect of which such officers have reason to beleive that contravention of any Government order specified in Schedule II appended to that Order has been, is being or is about to be committed. This order has been issued under section 3 of the Essential Supplies(Temporary Powers) Act and falls under clause(j)of sub section(2) of section 3. "Where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts or employing such means as are essentially necessary to its execution" (p.360 of Maxwell on the Interpretation of Statute, 9th edn). The power to serch premises and seize articles would therefore impliedly include the power to break open the lock if no ingress can be obtained to the premises where search is to be carried out without breaking open a door ora window. However, in case of searches by the Police such a provision has been expressly made in section 165 read with sections 102(2) and 48 of the Code of Criminal Procedure. Instead of therefore relying on implied powers, the best course would be for the Revenue Officers to seek the aid of Police in such cases.

Sd/-

Additional Secretary to Government.

U.R. to C.S.D. No.Gv 115/15,dated the 31st March 1951.

M.R.D
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LEGAL DEPARTMENT.

The applicant who was convicted and sentenced under clause 3 of the Bombay Food Grains Stock Declaration Order, 1949, has submitted a petition that the value of his paddy confiscated by the Magistrate should be refunded to him in view of his poverty etc. There is nothing in law to pregent Government from making an ex gratia payment to him of the amount on compassionate grounds. No doubt, this would mean, in effect, remission under section 401 of the Criminal Procedure Code of the punishment of forfeiture passed on the applicant by the Magistrate. However, there is no legal objection on that account to make an ex gratia payment if Government think it fit. The advisability orzotherwise of making such restitution is however for the ~~administr~~ administrative department concerned to decide.

Sd/-
Additional Secretary to Government.

M.R.D.
28-7-56
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U.R.to C.S.D. No. G-172 dated the 4th May 1951.

Legal Department.

In the circumstances stated in the Provincial Textile Controller's office note dated 17--3-51 ante, the best course would be to apply to the court for an order under section 516 A of the Criminal Procedure Code stating that these cloth bales are required for distribution and that they would be subjected to decay if kept till the trial is over and requesting that they may be handed over to the provincial Texitile Controller on his paying the cost which may be deposited with the court. The court can however pass an order under section 516 A only when the property is produced before it during any inquiry or trial and not merely during investigation by the police. The matter should therefore be before the Court either as an enquiry or ~~trial~~ trial. With the consent of the court samples with makings etc. may be kept as muddamal for the purposes of evidence at the trial.

Crime Branch II may be requested to move the court in the matter.

Sd/-
Additional Secretary to Government.

M.R.D. 26-7-56 C.4

U.O.No to P.T.C. No.....G.111 Dated 29th March 51.

Legal Department.

Since no complaint was made to the police nor any prosecution launched in any Court, the case in question does not attract the operation of any of the provisions of the Code of Criminal Procedure, 1898, including sections 517 and 523 thereof. Consequently, the sale proceeds may be handed over to the person producing evidence to show that he is the legal heir of the deceased and on his executing a suitable indemnity bond.

Sd/-29-5

Additional Secretary to Government.

U.R. to C. of R., No,-G-207,dated the 30 th May 1951.

26-7-58

Office of the R.L.A.

The following questions have been raised for R.L.A.'s consideration:-

(1) Whether a 1st Class Magistrate, though not especially empowered under section 3 of the Enhancement of Penalties Act, 1947, can take cognizance of a case for contravention of an order made under section 3 of the Essential Supplies(Temporary Powers) Act, 1946 and award the sentence himself, if the punishment called for is less than 2 years or whether he should commit the case to the Sessions Court.

(2)whether Shri Raje, the Resident Magistrate, First Class, Kolhapur and Shri Ravtani, the Sub Divisional Magistrate, First Class, Kolhapur, can be empowered to inflict enhanced punishments under section 3 of the Enhancement of Penalities Act, 1947 with retrospective effect.

Regarding question No. 1- The answer is that they should commit the case to the Sessions Court. Section 2(1)of the Enhancement of Penalties Act, 1947, inter alia, provides that notwithstanding anything contained in the Essential Supplies(Temporary Powers) Act, 1946, whoever contravenes any order made or deemed to be made under section 3 of the said Act shall be punished with imprisonment for a term which may extend to seven years. Under section 29, Criminal Procedure Code read with the 8th column of the 2nd schedule appended to the said code, the offences punishable with death, transporation or imprisonment for 7 years or upwards are to be tried by the Sessions Court only. Chapter XVIII of the Criminal Procedure Code which contains sections from 206to 220 is the Chapter on commitment to the Sessions Court or the High Court. Section 206(1)provides that any Presidency Magistrate, District Magistrate, Sub-Divisional Magistrate or a Magistrate of the First Class or any Magistrate especially empowered in this behalf by the State G...

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by the State Government, may commit any person for tri
Court of Sessions or the High Court for any offence
triable by such Court. For the cases exclusively
triable by the Sessions Court or the High Court or
which in the opinion of the Magistrate ought to be
tried by such Court, the enquires are to be made by
the Magistrate before whom the accused is produced,
and the procedure contained in sections 208-220
is to be adopted by him. If in the opinion of the
Magistrate the accused has not committed any offence,
he is to be discharged. If, however, the Magistrate
is satisfied that there are sufficient grounds for
committing the accused for trial he is to commit him
to the Sessions Court or the High Court as the case
may be. Through the cases under the Essential Supplies
(Temporary Powers) Act, 1946, are triable by the
Sessions Court, the punishment provided for in the
Enhancement of Penalties Act, 1947 being upto 7 years.,
there is nothing to prevent a Frist Class Magistrate
from taking conghisance of the case and from committing
the accused to the Sessions Court if on an enquiry
held by him there are sufficient grounds for doing so.
The First Class Magistrate has, in that case, however,
not to award any sentence even though the punishment
called for be less than 2 years. Thus the Resident
First Class Magistrate, Kolhapur, and the Sub-Divisional
Frist Class Magistrate, Kolhapur, referred to in
question No.(2), can make enquires in the cases under
the Essential Supplies(Temporary Powers) Act, 1946
Under Chapter XVIII of the Criminal Procedure Code but
they cannot inflict punishment, even upto 2 years
unless they are especially empowered under section 3 of
the Enhancement of Penalities Act,1947 to inflict enhanced
punishment. Attention of the Home Department is, however,
invited to para 2 of the R.L.A.'s opinion No.G-156 dated
the 21st April 1951 wherein it was held by him that in

view of the amendment of section 7 of the Essential Supplies(Temporary Powers) Act, 1946, subsequent to the Enchment of Penalties Act, the offences under the Essential Supplies(Temporary Powers) Act, 1946 are only punishable under section 7 of the said Act and not under the Enhancement of Penalties Act, 1947. As this point has been referred to the Advocate General for his opinion, the Home Department is requested to await further opinion on this point from this office.

Regarding question No. 2- The Resident First Class Magistrate and the Sub-Divisional First Class Magistrate of Kolhapur whom the Home Department proposes to empower to inflict enhancement punishments under sections 8 of the Enhancement of Penalties Act, 1947, would be able to try cases under Essential Supplies(Temporrary Powers) Act, 1946, from the date they would be so empowered. Even such of the cases under the said Act which might be pending on such date before them for commitment to the Sessions Court or for discharge, would also be triable by them.

Sd/-1/8

Remembrancer of Legal Affairs.

M.R.D. U.R. to H.D., No.G- 326,dated the 1st August 1951.
26-7-56
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In this case the IVth Additional City Magistrate, First Class, Poona granted permission to withdraw the case and discharged the accused under section 494(a) of the Criminal Procedure Code. "When the Crown has withdrawn the prosecution under section 494 and the accused is discharged, there is nothing to prevent the complainant from filing a fresh complaint. Courts are legally entitled to ignore the orders of discharge passed on the withdrawal of complaint if they are satisfied that the case is otherwise a fit one to be proceed with ". (Nasir Vs. Abdul Karim A.I.R. 1934, Lah. 169; and Hata vs. Emperor A.I.R. 1929 Lahore 315). The discharge under section 494 Criminal Procedure Code therefore does not bar the filing of a fresh case.

Section 17 of the Supply and Prices of Goods Act, 1950 provides that no offence punishable under the Act shall be inquired into by any person below the rank of an Inspector of Police and no prosecution of any such offence shall be instituted except with the previous sanction of the Central Government or of an officer not below the rank of a District Magistrate empowered by the Central Government to grant such sanction. In this case the prosecution can be refiled after giving the requisite sanction. The only difficulty would be about the investigation having been carried in this case by the Sub Inspector instead of by the Inspector of Police. If the Magistrate takes cognizance of the case then such irregularity in investigation would not be fatal to the case(Emperor Vs. Rustom Ardeshir Banaji-49 B.L.R. 821). But as the case stands withdrawn there is no question at present of the jurisdiction of the Magistrate. An Inspector of Police may now conduct the investigation. It is true that there would be difficulty about the Panchnamas etc. But it would not be difficult to prove the case on the evidence of witnesses

P.T. O.

witnesses such as the Bogus Customer, Panchas and the Sub Inspector. ~~In view of above~~

In view of above, this appears to be a fit case for re-filing the prosecution after getting the case re-investigated by an officer not below the rank of a Police Inspector and after giving the requisite sanction for prosecution.

Sd/-

Additional Secretary to Government.

U.R.to C.S.D. No.G- 294,dated the 20th July 1951.

M.R.D.
26-7-56
C.4